under section 206 after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.

SEC. 209. Conservators appointed pursuant to the provisions of this title shall be subject to the provisions of and to the penalties prescribed by section 5209 of the Revised Statutes (U. S. C., title 12, sec. 592), and sections 112, 113, 114, 115, 116, and 117 of the Criminal Code of the United States (U. S. C., title 18, secs. 202, 203, 204, 205, 206, and 207, in so far as applicable, are extended to apply to contracts, agreements, proceedings, dealings, claims, and controversies by or with any such conservator or the Comptroller of the Currency under the provisions of this title.

SEC. 210. Nothing in this title shall be construed to impair in any manner any powers of the President, the Secretary of the Treasury, the Comptroller of the Currency, or the Federal Reserve Board.

SEC. 211. The Comptroller of the Currency is hereby authorized and empowered, with the approval of the Secretary of the Treasury, to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this title. Whoever violates any rule or regulation made pursuant to this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

TITLE III

SEC. 301. Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail pursuant to action taken by its board of directors, issue preferred stock in such amount and with such par value as shall be approved by said comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in.

SEC. 302. (a) The holders of such preferred stock shall be entitled to cumulative dividends at a rate not exceeding 6 per cent per annum, but shall not be held individually responsible as such holders for any debts, contracts, or engagements of such association, and shall not be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock. Notwithstanding any other provision of law, the holders of such preferred stock shall have such voting rights, and such stock shall be subject to retirement in such manner and on such terms and conditions as may be provided in the articles of association with the approval of the Comptroller of the Currency.

(b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

SEC. 303. The term "common stock" as used in this title means stock of national banking associations other than preferred stock issued under the provisions of this title. The term "capital" as used in provisions of law relating to the capital of national banking associations shall mean the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired; and the term "capital stock," as used in section 12 of the act of March 14, 1900, shall mean only the amount of common stock outstanding.

SEC. 304. If in the opinion of the Secretary of the Treasury any national banking association or any State bank or trust company is in need of funds for capital purposes either in connection with the organization or reorganization of such association, State bank or trust company or otherwise, he may, with the approval of the President, request the Reconstruction Finance Corporation to subscribe for preferred stock in such association, State bank, or trust company, or to make loans secured by such stock as collateral, and the Reconstruction Finance Corporation may comply with such request. The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market or otherwise the whole or any part of the preferred stock of any national banking association, State bank, or trust company acquired by the corporation pursuant to this section. The amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this section.

TITLE IV

SEC. 401. The sixth paragraph of section 18 of the Federal Reserve Act is amended to read as follows:

"Upon the deposit with the Treasurer of the United States (a) of any direct obligations of the United States or (b) of any notes, drafts, bills of exchange, or bankers' acceptances acquired under the provisions of this act, any Federal Reserve bank making such deposit in the manner prescribed by the Secretary of the Treasury shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, duly registered and countersigned. When such circulating notes are issued against the security of obligations of the United States the amount of such circulating notes shall be equal to the face value of the direct obligations of the United States so deposited as security; and, when issued against the security of notes, drafts, bills of exchange, and bankers' acceptances acquired under the provisions of this act, the amount thereof shall be equal to not more than 90 percent of the estimated value of such notes, drafts, bills of exchange, and bankers' acceptances so deposited as security. Such notes shall be the obligations of the Federal Reserve bank procuring the same, shall be in form prescribed by the Secretary of the Treasury, shall be receivable at par in all parts of the United States for the same purposes as are national-bank notes, and shall be redeemable in lawful money of the United States on presentation at the United States Treasury or at the bank of issue. The Secretary of the Treasury is authorized and empowered to prescribe regulations governing the issuance, redemption, replacement, retirement, and destruction of such circulating notes and the release and substitution of security therefor. Such circulating notes shall be subject to the same tax as is provided by law for the circulating notes of national banks secured by 2 percent bonds of the United States. No such circulating notes shall be issued under this paragraph after the President has declared by proclamation that the emergency recognized by the President by proclamation of March 6, 1933, has terminated, unless such circulating notes are secured by deposits of bonds of the United States bearing the circulation privilege. When required to do so by the Secretary of the Treasury, each Federal Reserve agent shall act as agent of the Treasurer of the United States or of the Comptroller of the Currency, or both, for the performance of any of the functions which the Treasurer or the Comptroller may be called upon to perform in carrying out the provisions of this paragraph. Appropriations available for distinctive paper and printing United States currency or national-bank currency are hereby made available for the production of the circulating notes of Federal Reserve banks herein provided; but the United States shall be reimbursed by the Federal Reserve bank to which such notes are issued for all expenses necessarily incurred in connection with the procuring of such notes and all other expenses incidental to their issue, redemption, replacement, retirement, and destruction."

SEC. 402. Section 10 (b) of the Federal Reserve Act, as amended, is further amended to read as follows:

"SEC. 10. (b) In exceptional and exigent circumstances, and when any member bank has no further eligible and acceptable assets available to enable it to obtain adequate credit accommodations through rediscounting at the Federal Reserve bank or any other method provided by this act other than that provided by section 10 (a), any Federal Reserve bank, under rules and regluations prescribed by the Federal Reserve Board may make advances to such member bank on its time or demand notes secured to the satisfaction of such Federal Reserve bank. Each such note shall bear interest at a rate not less than 1 per cent per annum higher than the highest discount rate in effect at such Federal Reserve bank on the date of such note. No advance shall be made under this section after March 3, 1934, or after the expiration of such additional period not exceeding one year as the President may prescribe."

SEC. 403. Section 13 of the Federal Reserve Act, as amended, is amended by adding at the end thereof the following new paragraph:

"Subject to such limitations, restrictions, and regulations as the Federal Reserve Board may prescribe, any Federal Reserve bank may make advances to any individual, partnership, or corporation on the promissory notes of such individual, partnership, or corporation secured by direct obligations of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal Reserve bank, subject to the review and determination of the Federal Reserve Board."

TITLE V

SEC. 501. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $2,000,000, which shall be available for expenditure, under the direction of the President and in his discretion, for any purpose in connection with the carrying out of this act.

SEC. 502. The right to alter, amend, or repeal this act is hereby expressly reserved. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Mr. STEAGALL. Mr. Speaker, in view of the supreme emergency confronting the Congress and the country, it was thought that the House should act upon the legislation before us without the delay incident to the organization of the Committee on Banking and Currency to which the legislation would be referred for consideration under the usual procedure of the House.

Members of the House, including the distinguished leader and the beloved Speaker of the House, and Members of the Senate were called into conference last evening by the Chief Executive of the Nation and this bill was discussed by him and the request made that the measure be expedited in every possible manner. In response to this request and in re-

sponse to the demands of the hour, we have adopted this unusual method of consideration.

The first provision of the bill validates and maintains the authority exercised by the President of the United States in the proclamation relating to the banks of the Nation issued by the President on March 6, 1933.

Section 2 confers upon the President the powers bestowed under the act of October 6, 1917, regardless of whether or not the country is involved in war.

Section 3 gives authority to regulate transactions in gold and to exercise such powers as are required from time to time to conserve our supply of gold to prevent hoarding and to protect the currency of the United States.

Section 4 confers specific authority to control the banking operations of national banks and State banks that are members of the Federal Reserve System to the end that the public may have restored to them, at the earliest possible hour, such banking facilities as may be afforded by banks that are in position to transact banking activities without restriction.

The Comptroller of the Currency, with the approval of the Secretary of the Treasury, is given authority to appoint conservators to manage the affairs of national and member banks that are not, for the moment, in condition to resume complete operation. The conservator is empowered to do all the things essential to the preservation of the assets of an institution, to the protection of depositors and the public. But no power is given to proceed with final liquidation of the assets of a bank or to exercise completely the powers reposed in receivers of national banks.

State banks are not included in this provision of the bill. We thought it wise, after consideration of the measure, that State banks should not be embodied in legislation to the extent that we have provided for the control of national banks and member banks. The bill leaves State banks to the control of the State banking authorities, to work out their own problems in their own way, aided by some additional credit facilities established by this legislation and by further accommodations through the Reconstruction Finance Corporation.

The bill authorizes the Reconstruction Finance Corporation to subscribe for preferred stock in banks; and, after discussion and deliberation, it was decided—and the bill is so drawn—that State banks and trust companies shall share in the benefits of this provision the same as national banks and member banks of the Federal Reserve System.

So the Reconstruction Finance Corporation is not only authorized, as under existing law, to make loans upon the assets of State banks and National banks that are in distress, but the facilities of the Reconstruction Finance Corporation for accommodation have been enlarged to include loans upon the preferred stock which any bank, State or National, will be permitted to issue, or to subscribe for preferred stock, and assist State banks as well as national banks, in working out the problems with which they are confronted and to assist in reorganization.

I venture to say that this provision of the bill will prove of great advantage to the State banks of the country, over which we have no Federal control, and as to which we have not attempted to set up Federal control and regulation.

We have provided a simpler and broader authority for loans by Federal Reserve banks upon securities and collateral not eligible under the general authority of the Federal Reserve Act. This provision is extended for the period of 1 year, with power conferred upon the President to extend the operation for an additional year.

We have provided that any direct obligations of the United States or any notes, drafts, bills of exchange, or bankers' acceptances acquired by Federal Reserve banks may be deposited with the Treasurer of the United States or with the Federal Reserve agents, and upon these securities Federal Reserve bank notes may be issued. In case of the deposit of the obligations of the Government, the issue of Federal Reserve bank notes may be for the entire amount of such securities.

In the case of the deposit of notes, drafts, bills of exchange, and bankers' acceptances, Federal Reserve banks may issue Federal Reserve bank notes to the amount of 90 per cent of the value of such securities.

This provision affords a plan for constructive expansion of the currency of the country. [Applause.]

Mr. McREYNOLDS. To what amount?

Mr. STEAGALL. The amount will be limited by the demands and the exigency of the situation, and, of course, by the requirements of applying banks. [Applause.]

I will say to my friend on my right that there cannot be a greater expansion than the banks of the country demand for the protection of their depositors and for the support of trade and commerce in the United States. These depend on bank deposits and bank credit.

Mr. MAY. Will the gentleman yield?

Mr. STEAGALL. I will yield.

Mr. MAY. I understand that banks owning United States bonds can send them to the Federal Reserve bank and have 90 per cent of cash returned.

Mr. STEAGALL. An individual or any State bank may do it and to the amount of the face value of the bonds. That is where we have gone in liberalizing credit and expansion.

My friends, if you ask me if this is going to cure the situation in the United States, I do not say that it will cure all of our ills. If you ask me if this is what I would do in the existing emergency, I answer you that it is not all I would do. It is not all that is going to be done. [Applause.]

This is simply one step. We are building upon wreck and ruin. It has taken 50 years to develop the great financial system of the United States which is now prostrate and in ruins. We can not rebuild it in a day, we can not rebuild it in 3 days. We cannot rebuild it tomorrow or next week. We can only do it step by step.

> Heaven is not reached at a single bound;
> But we build the ladder by which we rise
> From the lowly earth to the vaulted skies
> And we mount to its summit round by round.

The step we take leads upward toward the light. We shall take this step today; we shall take another step tomorrow and then again another and another.

The people have summoned to their service a leader whose face is lifted toward the skies. [Applause.] We follow that leadership today, and we shall follow that leadership until we stand again in the glorious sunlight of prosperity and happiness in this Republic. [Applause.]

Mr. Speaker, I reserve the balance of my time.

Mr. McFADDEN. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts [Mr. LUCE].

Mr. LUCE. It is, of course, out of the question, Mr. Speaker, that any man can grasp the full meaning of that bill by listening to its reading, having had no intimation whatever beforehand of what it contains.

I, too, desire to help the administration meet this crisis. Whenever it may be necessary I will waive all opportunities of discussion.

Perhaps it was necessary in this instance to keep us on the minority side who have some acquaintance with this subject in the dark until the bill was produced. I will not intimate that there was intentional refraining from consultation with Members of this House who now for many years have lived with these questions and who ought to know something about them. The majority leaders have brought us a bill on which I myself am unable to advise my colleagues, except to say that this is a case where judgment must be waived, where argument must be silenced, where we should take matters without criticism lest we may do harm by delay. [Applause.]

Let me illustrate the embarrassments that come from lack of information. There is in this bill a provision for preferred stock of banks. Imagine my own situation, confronted by the fact that not 4 hours ago I put into the box there a bill with provision for that very purpose, not having the slightest idea that there had been discussion

of this matter. I do not want to be impatient, I do not want to seem even in the slightest disturbed, but I do think, and I say to my friends of the majority, that if they desire us to go along in these things, if they desire our sympathetic cooperation—we want to give it—let the desired results be accomplished by ways that will not arouse in the breast of any man the thought that he has not had a fair show, the feeling that he has not had opportunity to present his views, the feeling that he has had no chance to pass criticism, possibly helpful.

Let us forget what has happened in this instance, let us not allow it to remain in our minds against anyone. Doubtless the pressure of the situation made quick action imperative. I am not going to protest against it. I am going to ask my Republican friends to accept my own position and not begrudge any help to the President of the United States in this emergency. [Applause.]

There are in this bill some things that if they could have been discussed by the Banking and Currency Committee might have been reshaped, perhaps to the public advantage, but better have it go along as it is, without any attempt at change, without any repining, without any complaint. Let it go now, remembering that this House is to continue in session, at least off and on, for some time; and if it proves that errors have been made in the hasty drafting of the bill, we shall have the opportunity, by law, to make corrections—provided the opportunity is given to us, provided this procedure is not repeated except when absolutely necessary, provided the Committee on Banking and Currency is called together and given more opportunity than it had in the previous session to consider the great problems confronting the Nation, provided these problems are laid before the committee speedily, provided that we there may voice our matured views, express our friendly criticisms, and harmoniously work out together the results that shall be best for the country. [Applause.]

Mr. McFADDEN. Mr. Speaker, I regret that the membership of the House has had no opportunity to consider or even read this bill. The first opportunity I had to know what this legislation is was when it was read from the Clerk's desk. It is an important banking bill. It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States. It seems to me that the casual reading which I have given to the bill indicates clearly that if banks are permitted to open tomorrow morning, only those banks which do open will be permitted to operate. Other banks that do not open tomorrow morning will be opened under a limited receivership or a receivership. It is a protection for the solvent banks of the United States first. Of course it may be that the banking system is in such shape that it is necessary to deal with it in this manner. I have been calling attention for some years past to the manner in which the Federal Reserve System has been conducted, and have predicted that it would lead to this kind of a situation. We have, step by step, been proceeding along the lines of centralization. Attempts in past meetings of this Congress have succeeded in enacting increasingly centralized banking plans. This gives supreme authority to those people who have wanted to control the finances of this Government, through a centralized system, to have such a system. I wish, and I hope for the new administration all success. No one wants the new administration, under the leadership of President Roosevelt, to succeed any more than I do. I shall go as far as any other man to see that success comes to it, but I say now to that leadership that the first thing that must be done is to audit the United States Treasury. [Applause.]

We want to know, the people of the United States want to know, the condition of the Public Treasury and the obligations that are outstanding. We want to know the amount of gold in the United States Treasury, and we want to know the amount of gold in the Federal Reserve System. We want to know the total amount of outstanding Government obligations. This is a time to draw a line, and may I say to you Democrats here that if you do not draw a line through the Treasury operations now and the Federal Reserve operations, you will be enmeshed in all the things that they have been doing, and they have been doing some things, as I have pointed out heretofore, or we would not be in the condition we are in today. I want to know, so far as I am concerned, that this bill represents the ideas of the new administration—the new deal. I shall help to carry it through if it is that. If, on the other hand, this bill has been proposed and written by the same influences that are responsible for this financial situation, I shall fight it and do everything that I can to defeat it. It seems to me there is authority here to continue the Federal Reserve operations under the same management, and it seems to me I can see much in this bill that can be abused and that may have been dictated by the same banking influences that are responsible for our present predicament. I hope that is not so, but I do want to impress upon this House and upon the administration the importance of going to the bottom of this situation. This situation demands a house cleaning. Confidence in this country will not be restored until the people of the country know the condition of the United States Treasury and the condition of the Federal Reserve banks.

It is difficult under the circumstances to discuss this bill. The first section of the bill, as I grasped it, is practically the war powers that were given back in 1917, with some slight amendments. The other gives supreme authority to the Secretary of the Treasury of the United States to impound all the gold in the United States in the hands of individuals, corporations, or companies for the purpose, I suppose, of bringing together that gold and making it available for the issuance of Federal Reserve notes.

The third section deals with how banks are to be handled under this authority, how bank assets are to be frozen, and deals with the question of limited receiverships and receiverships. The last section of the bill provides for the issuance of a new money. I am a little at a loss, in the hurried way I have had to read the bill, to understand just how this new money is to be handled. I refer to section 401, which reads:

> Upon deposit with the Treasurer of the United States of all contract obligations of the United States, or any notes—

And so forth.

Under the Federal Reserve Act obligations that are deposited as the security and gold for reserve notes are placed in the hands of the Federal Reserve agent. I would like to ask the chairman of the committee if this is a plan to change the holding of the security back of Federal Reserve notes to the Treasury of the United States rather than the Federal Reserve agent.

Mr. STEAGALL. This provision is for the issuance of Federal Reserve bank notes; not for Federal Reserve notes; and the security back of it is the obligations, notes, drafts, bills of exchange, bank acceptances, outlined in the section to which the gentleman has referred.

Mr. McFADDEN. Then the new circulation is to be Federal Reserve bank notes and not Federal Reserve notes? Is that true?

Mr. STEAGALL. Insofar as the provisions of this section are concerned, yes.

Mr. McFADDEN. I would like to ask the gentleman right in that connection, is there any gold reserve to be held as security back of these new Federal Reserve bank notes?

Mr. STEAGALL. The law provides 5 percent back of Federal Reserve bank notes, just as is maintained in case of national-bank notes. There have been issued a small amount of these notes; I cannot recall the exact figures. The gentleman is probably more familiar with it than I am. There is only a little of that currency outstanding. This contemplates a substantial addition to it. It is a liberalization of currency issue, to take care of banks in their efforts to respond to the demands of business and liability to their depositors.

Mr. McFADDEN. The current press reports indicate there will be issued under this authority some $2,000,000 or more of new currency, and made available to the banks. Is that correct?

Mr. STEAGALL. To be frank with the gentleman, I should not like to be bound in my answer by estimates outlined in newspaper reports. The issue might greatly exceed the amount suggested.

Mr. McFADDEN. Will the gentleman say how much it is possible to be issued or is contemplated to be issued?

Mr. STEAGALL. No one knows. It is not an arbitrary expansion. The purpose is to provide an elastic expansion to meet the exigencies and development of banking and business conditions.

Mr. McFADDEN. I think it is fairly clear from the colloquy that has just taken place that the increased Federal Reserve circulation is to be in the form of Federal Reserve bank notes and not the present Federal Reserve notes that are in circulation to the extent of approximately $4,000,000,000, which are secured by 60 percent of eligible paper or Government bonds and 40 percent of gold. This is a new issue which is authorized under the Federal Reserve Act, which has not to any great extent been resorted to heretofore.

Mr. BRITTEN. Will the gentleman yield for a question?

Mr. McFADDEN. I will.

Mr. BRITTEN. From my observation of the bill as it was read to the House, it would appear that the amount of bank notes that might be issued by the Federal Reserve System is not limited. That will depend entirely upon the amount of collateral that is presented from time to time for exchange for bank notes. Is that not correct?

Mr. McFADDEN. Yes. I think that is correct.

Mr. BRITTEN. So that it might run to $20,000,000,000?

Mr. McFADDEN. In the discretion of the President and the Secretary of the Treasury. These notes are to be secured by assets that are approved, that are turned over by financial institutions to the Treasury of the United States. [Applause.]

Mr. STEAGALL. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland [Mr. GOLDSBOROUGH].

Mr. GOLDSBOROUGH. Mr. Speaker, in time of storm there can only be one pilot. In my judgment, the House of Representatives realize that the pilot in this case must be the President of the United States, and they will steer their course by him. [Applause.]

Mr. Speaker, in my deliberate judgment, under the leadership of the President of the United States, there will shortly be brought from the Committee on Banking and Currency carefully considered legislation insuring the depositors in all banks [applause] and carefully considered legislation which will reflate and stabilize the currency of this country. [Applause.] Mr. Speaker, those two measures, if enacted into law, will speedily give the people of this country such prosperity as we have never had before in all of its history. [Applause on the Democratic side.]

Mr. STEAGALL. Mr. Speaker, I yield the remainder of my time to the gentleman from Mississippi [Mr. BUSBY].

Mr. BUSBY. Mr. Speaker, in order for business to carry on, it is necessary to have a medium of exchange. In this country our medium of exchange is based on currency and on bank credits. For several months some of us have seen the bank-credit situation breaking down and going out of use. The condition in which we find ourselves today is absolutely no surprise to me, and it is no surprise to some of the other gentlemen who have studied the question. The house had to fall upon us to get some of the gentlemen who are responsible for our condition to understand our predicament.

I have hoped, and others have hoped, for a restoration of the currency and of the mediums of exchange in this country—to no avail. We have come to the point where we are willing to endorse in a formal way an Executive fiat on this question; and I want to follow on, because I want the people of this country to have currency and mediums of exchange with which to do business. [Applause.]

Mr. STEAGALL. Mr. Speaker, I move the previous question on the passage of the bill.

The SPEAKER. Under the unanimous-consent agreement the previous question is considered as ordered.

The bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. STEAGALL, a motion to reconsider the vote by which the bill was passed was laid on the table.

EXTENSION OF REMARKS—H.R. 21

Mr. BYRNS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to extend their own remarks upon this bill.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

CURRENCY EXPANSION—PRESIDENT'S MOVE DRAMATIC AND INSPIRING

Mr. RANKIN. Mr. Speaker, for 3 years I have been pleading for a controlled expansion of the currency to raise commodity prices and restore the purchasing power of the American people. Other Members of the House and Senate have joined me in the fight, but up to this day our efforts have been in vain.

Those influences and individuals most responsible for the direful conditions through which we are now passing have resisted us at every point. We have been ridiculed and abused by the very money changers whose misconduct produced this terrible panic, with all its misery, its poverty, its hunger, its human suffering and human distress. "Whatsoever man soweth, that shall he also reap." The very ones who sowed the seeds of this panic are now reaping the fruits of their own misconduct as they see their monetary Tower of Babel crash amid a confusion of tongues.

We are in the bottom of the pit. Every direction is uphill. The gentleman from Illinois [Mr. BRITTEN] intimated a while ago that this bill might result in unlimited expansion or inflation. My answer to that statement is that conditions cannot be made worse, from an economic standpoint, than they are today.

Besides, this bill does not provide for an unlimited expansion. It provides for a controlled expansion. Every dollar of this new money will be worth 100 cents; and if issued in a sufficient amount, the result will be an immediate advance in the prices of wheat, cotton, corn, land, and other commodities.

It is the beginning of a new day—a turning point in the economic affairs of the American people, if not of the entire world. This bill will be followed by one providing permanent legislation on this subject; and if we will incorporate in that permanent legislation the provision laid down in the bill which I have been advocating and which I have reintroduced today—to expand the currency until the general commodity-price index as worked out by the United States Department of Labor reaches 100, and then providing for a retrenchment in case the commodity index rises above 103, and also for reexpansion in case the commodity index sinks below 97—if these provisions are written into the permanent legislation, this expansion will raise the commodity prices back to what they were in 1926, stabilize them there, and prevent those violent fluctuations in prices that have always proved disastrous to the farmers, the home owners, the small investors, and the masses of our people generally.

The American people are looking today to our new President to lead us out of the economic chaos in which we find ourselves. This is the most dramatic and inspiring move ever taken by a President of the United States in times of peace. If it is followed up by permanent legislation that will give us a controlled expansion of the currency, and an assurance of the safety of bank deposits, our country will immediately awake, as it were, from its nightmare of agony and leap forward into a glorious era of happiness and prosperity.

H.R. 21, A BILL TO REDUCE THE GOLD CONTENT OF THE GOLD DOLLAR

Mr. McGUGIN. Mr. Speaker, I have introduced H.R. 21. I wish to make a brief statement pertaining to this bill. In doing so I shall use the statement I gave to the press

when I filed this bill with the bill clerk, Tuesday, March 7, 1933.

There is not any question but that sooner or later the gold dollar is going to be revalued with a reduction of the gold content. The only question involved is whether we are going to reduce the gold content in an orderly way or a disorderly way. The orderly way to do it is honestly, fearlessly, and frankly to reduce the content a given amount. The disorderly way is to break loose and start printing currency without any regard for the gold reserve.

The bill which I am introducing in the House and which, I understand, Senator CONNALLY will introduce in the Senate, provides for an outright reduction of one third in the gold content of the dollar. This is following the orderly course.

We now have approximately $4,000,000,000 of gold in the Treasury and Federal Reserve, based upon gold dollars of 23.22 grains of gold each. With this reduction of one third in the gold content, we shall have approximately $6,000,000,000 of gold in the Treasury and Federal Reserve. This additional $2,000,000,000 in gold will permit an additional issuance of from two to five billion dollars in currency. Based upon the established ratio of $1 of currency for 40 cents' worth of gold, these additional $2,000,000,000 obtained by reducing the gold content one third will permit additional currency in the amount of $5,000,000,000.

If we start out printing currency without regard for the gold reserve, then in the end, when we find that excessive inflation destroys the country and the people, we shall try to get back to the gold standard. Then we shall find that we have so much currency outstanding that we cannot tie it to our limited supply of gold except by reducing the content of the gold dollar in proportion to the increased amount of currency. That may mean that we shall have to decrease the gold content 50 percent, maybe 75 percent, and maybe 90 percent. It will all depend upon how far we carry the inflation during the period that our currency is not tied to gold. It may be that we shall do as Germany did by going so far that there is no possibility of tying all of our outstanding currency to gold, and we shall be obliged to repudiate and cancel some of our currency.

Now we are going to have some inflation or more currency. It does not make any difference whether every Member of Congress, the President, and everyone in the United States is opposed to any inflation, we can not stop the inevitable. The Government has for 3 years been spending more money than it has taken in by taxation. It has been meeting this deficit by borrowing money from the banks. That day is over. The banks are closed. Now the problem is, How is the Government going to get the banks open and keep them open, and not how are the banks going to provide credit for the Government?

The interest rate of the Government on short-term loans increased from one eighth of 1 percent last December to 4.26 percent last week. This means that the interest rate of the Government has increased thirty-four times, or 3,400 percent during a period of 3 months. Whenever institutions or individuals find their interest rates increasing at such a proportion in such a short length of time, one of two things is certain: either their credit is gone or their source of credit is gone. In plain English, the credit of the United States has either been absorbed or else its source of credit is gone. Anyone knows that this Government cannot now collect enough taxes to meet its present expenses. Whenever governments reach the position where they can neither collect enough taxes to meet their expenses nor borrow enough to meet their expenses, there is only one thing left for them, and that is to print money. Such is the position of the United States; and, whether we like it or not, there is going to be some inflation in order to meet the obligations of the Government. The question is, Are we going to have inflation tied to gold or not? This bill will permit inflation tied to gold, and that will mean some control. There is nothing new about this bill. It is the Burtness bill which has been before Congress for 4 or 5 years. A people satisfied with a false security and led by a financial leadership steeped in selfishness and blind to shadows casting present events would have none of it. The Burtness bill, passed a year or more ago, would have saved us from much of our present trouble.

The welfare of the Government needs this or some other similar legislation. In addition to our governmental financial troubles, the debts, private and public, in this country cannot be paid on the basis of gold dollars of 23.22 grains.

THE BANKING EMERGENCY RELIEF ACT

Mr. SMITH of Washington. Mr. Speaker, ladies and gentlemen of the House, I shall vote for this measure, although I should like to have had an opportunity to study and consider its provisions. It has not been possible to do this owing to the fact that the bill has merely been read to us by the Clerk this afternoon on the opening day of this special session, without our being furnished copies thereof, and the bill not being subject to amendment and only 40 minutes allowed for debate. This is a most extraordinary situation.

However, we are advised by President Roosevelt in his message which has just been read that the immediate passage of this legislation is absolutely necessary in order to reopen the banks in the Nation and provide them with additional and adequate currency. We are further informed by our distinguished majority leader [Mr. BYRNS] that the Senate is now awaiting the action of the House on this particular bill, and that in order to reopen the banks of the country on tomorrow it must be enacted into law today. I shall, therefore, vote for the bill, Mr. Speaker, because of these assurances of our great President and our able leaders in this body.

However, if time and opportunity had been afforded to do so, I believe that this legislation should have been amended or rewritten to include the State banks scattered throughout the land, which in many communities constitute the sole banking facilities enjoyed by the people.

I hope that the additional currency which may be issued by the national banks under this act will render available the credit and funds so sorely needed by the business and industrial interests of our country, in order that there may be a resumption of operations and employment for the people. If the new currency is not placed in circulation, this legislation, my colleagues, will fail of its purpose, which should be to aid the people rather than the banks.

Mr. Speaker, we must have a Federal guaranty of bank deposits law, so that the savings of our citizens and the money of our merchants and business men in all the communities of our land will be safe and secure. Not until such a Federal statute is passed and in force will complete confidence in our banking system be restored, nor the funds of the American people placed on deposit in the banks and enable the bankers to make loans to finance the transactions of business and industry in this country.

HOW THE GOVERNMENT CAN SAVE AT LEAST $700,000,000 ANNUALLY—AND MAKE BANKS SAFE

Mr. PATMAN. Mr. Speaker, Thursday, March 9, Congress was convened in extraordinary session; it is the first session of the Seventy-third Congress. The President submitted a bill which was intended to assist in the opening of all the banks in the Nation. Although it was contrary to many of the principles that I have advocated for many years, it contained provisions I do not approve and failed to go far enough in other ways, I yielded and voted for the bill; it was an emergency measure and should have been passed immediately. The proposal embodied one feature that I have advocated for a long time, and that was the issuance of additional circulating medium. The banks of the Nation have inflated credit out of proportion to the amount of actual money. The result is the banks have become indebted to their depositors to the extent of $45,000,000,000 and have in their vaults less than $1,000,000,000 to pay it with. The new law will cause the printing presses at the Bureau of Engraving and Printing here in Washington to print more money and furnish it to the banks. One day this week this Bureau

printed and delivered more than $30,000,000, running both day and night. Similar sums are now being printed and delivered daily.

EXPANSION OF CURRENCY NECESSARY

If the Republican Party had released itself from the clutches of Wall Street and expanded the currency immediately after the stock-market crash in 1929 or within a year after the crash, our people would have been saved from this awful money panic. Our President will doubtless ask amendments to this new law when conditions are more normal and when it is better understood. Under the new law the money is issued to the banks in return for Government obligations, bills of exchange, drafts, notes, trade acceptances, and banker's acceptances. The money will be worth 100 cents on the dollar, because it is backed by the credit of the Nation. It will represent a mortgage on all the homes and other property of all the people in the Nation.

NO GOLD COVERAGE

The money so issued will not have one penny of gold coverage behind it, because it is really not needed. We do not need gold to back our internal currency. We only need gold to settle our balances with foreign countries. Our people do not actually use gold as a medium of exchange; paper money is just as good and is much easier to handle. However, if gold is desired as a backing for paper money, we have a sufficient amount to permit the issuance of $5,000,000,000 more money and still have a gold reserve of 40 percent. When England paid us approximately $100,000,000 in gold last December the Treasury should have taken that gold and issued $250,000,000 in paper money, using the gold as a sufficient coverage of 40 percent, and the money should have been put into circulation by paying it to Government employees or other governmental debts. Instead, the gold was delivered to the private banks and the Government given credit for the amount. The banks used a part of it as a base to issue considerable money, which they loaned to their customers, and the remainder, which was the most of it, was sold back to England by the bankers.

DRIVE AGAINST GOLD HOARDERS

The gold that is given up by the people in the present crisis should be delivered to the Government. It should be used to issue additional money upon which the people will not have to pay interest while it is in circulation.

PRESENT SATISFACTION

Those of us who have worked for 3 years trying to get the currency expanded have the consolation of knowing that our plan has been adopted. I do not believe that the expansion is being made in a manner that will permit the most good. However, the same kind of money is being issued that we have advocated should be issued. It is sound money, although not as well secured as the money we proposed to issue.

DISTRIBUTION OF NEW MONEY

Since our leaders have endorsed the plan to issue more money, consideration should be given to plans for its distribution that will best promote the general welfare.

It could be paid to Federal employees. It could be used to retire a part of the national debt and save a considerable sum in interest each year. At the present time our entire national debt of $20,000,000,000 could be retired with new money without placing too much money in circulation and the Government saved more than $700,000,000 annually.

SAVE $700,000,000 ANNUALLY

Instead of the banks being permitted to loan $45,000,000,000 with a reserve of from one to three billion dollars to back it up, they should be denied that privilege and a much greater money reserve required of them. Then, instead of the banks having so little money to pay their depositors, they could have 40 or 50 cents in actual money to back up every dollar in deposits. We would then have safe banking, and the Government would not owe a penny of national debt. Further, our Government would be saved the $700,000,000 that is now being paid annually as interest on the national debt. That would help balance the Budget; it would take tax-exempt securities out of the way and cause more income taxes to be paid to the Government and less taxdodging by the big rich.

OPPOSITION TO CONCENTRATION OF MONEY AND CREDIT CONTROL IN THE HANDS OF A FEW GREAT INTERNATIONAL BANKING CONCERNS

Mr. LUNDEEN. Mr. Speaker, today the Chief Executive sent to this House of Representatives a banking bill for immediate enactment. The author of this bill seems to be unknown. No one has told us who drafted the bill. There appears to be a printed copy at the Speaker's desk, but no printed copies are available for the House Members. The bill has been driven through the House with cyclonic speed after 40 minutes' debate, 20 minutes for the minority and 20 minutes for the majority.

I have demanded a roll call, but have been unable to get the attention of the Chair. Others have done the same, notably Congressman SINCLAIR, of North Dakota, and Congressman BILL LEMKE, of North Dakota, as well as some of our other Farmer-Labor Members. Fifteen men were standing, demanding a roll call, but that number is not sufficient; we therefore have the spectacle of the great House of Representatives of the United States of America passing, after a 40-minute debate, a bill its Members never read and never saw, a bill whose author is unknown. The great majority of the Members have been unable to get a minute's time to discuss this bill; we have been refused a roll call; and we have been refused recognition by the Chair. I do not mean to say that the Speaker of the House of Representatives intended to ignore us, but everything was in such a turmoil and there was so much excitement that we simply were not recognized.

I want to put myself on record against a procedure of this kind and against the use of such methods in passing legislation affecting millions of lives and billions of dollars. It seems to me that under this bill thousands of small banks will be crushed and wiped out of existence, and that money and credit control will be still further concentrated in the hands of those who now hold the power.

It is safe to say that in normal times, after careful study of a printed copy and after careful debate and consideration, this bill would never have passed this House or any other House. Its passage could be accomplished only by rapid procedure, hurried and hectic debate, and a general rush for voting without roll call.

I believe in the House of Representatives. I believe in the power that was given us by the people. I believe that Congress is the greatest and most powerful body in America, and I believe that the people have vested in Congress their ultimate and final power in every great, vital question, and the Constitution bears me out in that.

I am suspicious of this railroading of bills through our House of Representatives, and I refuse to vote for a measure unseen and unknown.

I want the RECORD to show that I was, and am, against this bill and this method of procedure; and I believe no good will come out of it for America. We must not abdicate our power to exercise judgment. We must not allow ourselves to be swept off our feet by hysteria, and we must not let the power of the Executive paralyze our legislative action. If we do, it would be better for us to resign and go home—and save the people the salary they are paying us.

I look forward to that day when we shall read the bill we are considering, and see the author of the bill stand before the House and explain it; and then, after calm deliberation and sober judgment—after full and free debate—I hope to see sane and sensible legislation passed which will lift America out of this panic and disaster into which we were plunged by the World War.

RULES OF THE HOUSE

Mr. POU. Mr. Speaker, I offer a resolution and ask for its immediate consideration.

United States presidential certificate of authority as authorized by presidential proclamation 2039.

I do hereby declare that I accept the role as a banking institution during the ongoing and substantiated national emergency. That I accept the suspending of all normal banking activities and elect to utilize section 401 of the Federal Reserve act as amended by the 1933 Congress on March 9 referring to subsection 18 paragraph 6 of the Federal Reserve act and section 4 of the March 1933 act and page 78 through 83 of the Cong. Rec. of the first session of the 73rd Congress standing as irrefutable evidence as to what the law is!

the statutes at large of the united states of america from sixty-fifth congress. sess. i. ch. 106. 1917, p. 418. 50 u.s. code § 4305 - suspension of provisions relating... property transfers, vested interests, enforcement and penalties...- credit money/ money credits assignments...

"the alien property custodian and such other persons as the president may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the' alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. the president shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the united states. whenever any such certificate of authority shall be offered to any, registrar, clerk, or other recording officer, federal or otherwise, within the united states, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the -united states or other courts within the united states..."

individuals should not be liable for damages for acting pursuant to a statute later declared invalid. "Citizens and public officials have a right to accept the law as it is written until it is repealed or judicially condemned. *They are not required to speculate upon the validity of a statute or to act under it at their peril.*" Downs v. Jacobs, 272 A.2d 706, 707 (Del. 1970).

Proclamation 2039 – Declaring Bank Holiday

(March 6, 1933)

By the President of the United States of America

A Proclamation

Whereas there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

Whereas continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

Whereas those conditions have created a national emergency; and

Whereas it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

Whereas it is provided in Section 5 (b) of the Act of October 6, 1917 (40 Stat. L. 411), as amended, "That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency . . ."; and

Whereas it is provided in Section 16 of the said Act "That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than ten years, or both . . .";

Now, Therefore I, Franklin D. Roosevelt, President of the United States of America, in view of such national emergency and by virtue of the authority vested in me by said Act and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the Sixth day of March, to Thursday, the Ninth day of March, Nineteen Hundred and Thirty-three, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended. During such holiday, excepting as hereinafter provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place abroad, or transact any other banking business whatsoever.

During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (b) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (c) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve Banks or invested in obligations of the United States.

As used in this order the term "banking institutions" shall include all Federal Reserve Banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons, engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business.

FRANKLIN D. ROOSEVELT emphasis added

PUBLIC LAWS OF THE SEVENTY-THIRD CONGRESS

OF THE

UNITED STATES OF AMERICA

Passed at the first session, which was begun and held at the city of Washington, in the District of Columbia, on Thursday, the ninth day of March, 1933, and was adjourned without day on Friday, the sixteenth day of June, 1933.

FRANKLIN D. ROOSEVELT, President; JOHN N. GARNER, Vice President; KEY PITTMAN, President of the Senate *pro tempore*; HENRY T. RAINEY, Speaker of the House of Representatives.

[CHAPTER 1.]

AN ACT

To provide relief in the existing national emergency in banking, and for other purposes.

March 9, 1933.
[H.R. 1491.]
[Public, No. 1.]

National banking system.
Emergency declared existing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

Proclamations, orders, etc., issued since March 4, 1933; approval.
Post, p. 343.
Trading with the Enemy Act, amended.
Vol. 40, pp. 415, 966, amended.
Foreign exchange, export or hoarding of coin, bullion, etc.
Regulatory powers of President during national emergency.

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

"(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned

Compulsory testimony, etc.

Punishment for violation.

for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

"Person" construed.

Federal Reserve Act, amended.
Vol. 39, p. 752.

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

Emergency impounding of gold.
Authority of Secretary of Treasury.

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

Exchange for any other form of currency, etc.

Reimbursing transportation costs.

Hoarding, etc., deemed an offense.

Penalty.

Operations of the National Banking and Federal Reserve Systems.
Emergency suspension, etc., provided for.

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

Proclamation.

Penalty for violation.

Each day a separate offense.

TITLE II

"Bank Conservation Act."
Citation of title.
Terms construed
Post, p. 72.

SEC. 201. This title may be cited as the "Bank Conservation Act."

SEC. 202. As used in this title, the term "bank" means (1) any national banking association, and (2) any bank or trust company located in the District of Columbia and operating under the supervision of the Comptroller of the Currency; and the term "State" means any State, Territory, or possession of the United States, and the Canal Zone.

Conservators.

SEC. 203. Whenever he shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other

creditors thereof, the Comptroller of the Currency may appoint a conservator for such bank and require of him such bond and security as the Comptroller of the Currency deems proper. The conservator, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers of insolvent national banks and shall be subject to the obligations and penalties, not inconsistent with the provisions of this title, to which receivers are now or may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this title, be the same as if a receiver had been appointed therefor. All expenses of any such conservatorship shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this Act or otherwise. The conservator shall receive as salary an amount no greater than that paid to employees of the Federal Government for similar services.

Appointment
Bond, etc, required

To take over all books, assets, etc.

Powers and obligations of.

Rights under.

Expenses of conservatorship.

Salary.

SEC. 204. The Comptroller of the Currency shall cause to be made such examinations of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank, and the examiner shall make a report thereon to the Comptroller of the Currency at the earliest practicable date.

Bank examination; reports.

SEC. 205. If the Comptroller of the Currency becomes satisfied that it may safely be done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.

Termination of conservatorship and resumption of bank business.

SEC. 206. While such bank is in the hands of the conservator appointed by the Comptroller of the Currency, the Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the Comptroller may safely be used for this purpose; and the Comptroller may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States, or deposited with a Federal reserve bank. The Federal reserve banks are hereby authorized to open and maintain separate deposit accounts for such purpose, or for the purpose of receiving deposits from State officials in charge of State banks under similar circumstances.

Sums for depositors' withdrawals or payments for creditors set aside by conservator.

Receipt of deposits.

Certain limitations not applicable to.

Segregation; restriction on use, etc.

To be kept on hand in cash.

Separate accounts to be kept.

SEC. 207. In any reorganization of any national banking association under a plan of a kind which, under existing law, requires the consent, as the case may be, (a) of depositors and other creditors or (b) of stockholders or (c) of both depositors and other creditors and stockholders, such reorganization shall become effective only (1) when the Comptroller of the Currency shall be satisfied that the plan of reorganization is fair and equitable as to all depositors, other cred-

Bank reorganization.
Post, p. 72.
Requirements, etc.

Approval of Comptroller.

itors and stockholders and is in the public interest and shall have approved the plan subject to such conditions, restrictions and limitations as he may prescribe and (2) when, after reasonable notice of such reorganization, as the case may require, (A) depositors and other creditors of such bank representing at least 75 per cent in amount of its total deposits and other liabilities as shown by the books of the national banking association or (B) stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the national banking association or (C) both depositors and other creditors representing at least 75 per cent in amount of the total deposits and other liabilities and stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the national banking association, shall have consented in writing to the plan of reorganization: *Provided, however*, That claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the national banking association in determining the 75 per cent thereof as above provided. When such reorganization becomes effective, all books, records, and assets of the national banking association shall be disposed of in accordance with the provisions of the plan and the affairs of the national banking association shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the Comptroller of the Currency. In any reorganization which shall have been approved and shall have become effective as provided herein, all depositors and other creditors and stockholders of such national banking association, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.

Consent of depositors representing 75 per cent of deposits, etc.

Or stockholders.

Depositors and other creditors.

Proviso.
Satisfied claims to be deducted.

Disposition of records, assets, etc., on reorganization.

Plan to apply equally.

Segregation of deposits to cease.

SEC. 208. After fifteen days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in section 207 hereof, the provisions of section 206 of this title with respect to the segregation of deposits received while it is in the hands of the conservator and with respect to the use of such deposits to liquidate the indebtedness of such bank shall no longer be effective: *Provided*, That before the conservator shall turn back the affairs of the bank to its board of directors he shall cause to be published in a newspaper published in the city, town or county in which such bank is located, and if no newspaper is published in such city, town or county, in a newspaper to be selected by the Comptroller of the Currency published in the State in which the bank is located, a notice in form approved by the Comptroller, stating the date on which the affairs of the bank will be returned to its board of directors and that the said provisions of section 206 will not be effective after fifteen days after such date; and on the date of the publication of such notice the conservator shall immediately send to every person who is a depositor in such bank under section 206 a copy of such notice by registered mail addressed to the last known address of such person as shown by the records of the bank, and the conservator shall send similar notice in like manner to every person making deposit in such bank under section 206 after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.

Proviso.
Notice before turning back control.

To be furnished each depositor.

Provisions governing conservators.
R.S. sec. 5209, p. 1007; U.S.C. pp. 291, 475.
Vol. 35, p. 1108.
Vol. 40, p. 972.

SEC. 209. Conservators appointed pursuant to the provisions of this title shall be subject to the provisions of and to the penalties prescribed by section 5209 of the Revised Statutes (U. S. C., Title 12, sec. 592); and sections 112, 113, 114, 115, 116 and 117 of the Criminal Code of the United States (U. S. C., Title 18, secs. 202, 203, 204, 205, 206 and 207), in so far as applicable, are extended to apply to contracts, agreements, proceedings, dealings, claims and controversies by or with any such conservator or the Comptroller of the Currency under the provisions of this title.

Powers of President, etc., not impaired.

SEC. 210. Nothing in this title shall be construed to impair in any manner any powers of the President, the Secretary of the Treasury, the Comptroller of the Currency, or the Federal Reserve Board.

Rules to be prescribed.

SEC. 211. The Comptroller of the Currency is hereby authorized and empowered, with the approval of the Secretary of the Treasury, to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this title. Whoever violates any rule or regulation made pursuant to this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

TITLE III

National banks.
Preferred stock.
Post, p. 147.

SEC. 301. Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail pursuant to action taken by its board of directors, issue preferred stock in such amount and with such par value as shall be approved by said Comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in.

Issue of, by vote of shareholders.

Amount, par value, etc.

Payment.

Dividends.
Post, p. 148.

SEC. 302. (a) The holders of such preferred stock shall be entitled to cumulative dividends at a rate not exceeding 6 per centum per annum, but shall not be held individually responsible as such holders for any debts, contracts, or engagements of such association and shall not be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock. Notwithstanding any other provision of law, the holders of such preferred stock shall have such voting rights, and such stock shall be subject to retirement in such manner and on such terms and conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency.

Liability of shareholders.

Voting rights.

Retirement provisions.

Priority.

(b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

Definitions.
"Common stock."

"Capital."

SEC. 303. The term "common stock" as used in this title means stock of national banking associations other than preferred stock issued under the provisions of this title. The term "capital" as used in provisions of law relating to the capital of national banking associations shall mean the amount of unimpaired common stock plus

"Capital stock."

the amount of preferred stock outstanding and unimpaired; and the term "capital stock", as used in section 12 of the Act of March 14, 1900, shall mean only the amount of common stock outstanding.

Reconstruction Finance Corporation.
Subscription for preferred stock.
Post, p. 21.

SEC. 304. If in the opinion of the Secretary of the Treasury any national banking association or any State bank or trust company is in need of funds for capital purposes either in connection with the organization or reorganization of such association, State bank or trust company or otherwise, he may, with the approval of the President, request the Reconstruction Finance Corporation to subscribe for preferred stock in such association, State bank or trust company, or to make loans secured by such stock as collateral, and the Reconstruction Finance Corporation may comply with such request. The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market or otherwise the whole or any part of the preferred stock of any national banking association, State bank or trust company acquired by the Corporation pursuant to this section. The amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this section.

Sale of, permitted.

Increase of outstanding obligations authorized.

*****DEPOSITS****

TITLE IV

Federal Reserve Act, amendments.
Vol. 38, p. 269, amended.
U.S.C., p. 286.
Delivery of circulating notes on deposit of U.S. bonds, etc.
Post, p. 21.

SEC. 401. The sixth paragraph of Section 18 of the Federal Reserve Act is amended to read as follows:

"Upon the deposit with the Treasurer of the United States, (a) of any direct obligations of the United States or (b) of any notes, drafts, bills of exchange, or bankers' acceptances acquired under the provisions of this Act, any Federal reserve bank making such deposit in the manner prescribed by the Secretary of the Treasury shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, duly registered and countersigned. When such circulating notes are issued against the security of obligations of the United States, the amount of such circulating notes shall be equal to the face value of the direct obligations of the United States so deposited as security; and, when issued against the security of notes, drafts, bills of exchange and bankers' acceptances acquired under the provisions of this Act, the amount thereof shall be equal to not more than 90 per cent of the estimated value of such notes, drafts, bills of exchange and bankers' acceptances so deposited as security. Such notes shall be the obligations of the Federal reserve bank procuring the same, shall be in form prescribed by the Secretary of the Treasury, shall be receivable at par in all parts of the United States for the same purposes as are national bank notes, and shall be redeemable in lawful money of the United States on presentation at the United States Treasurer or at the bank of issue. The Secretary of the Treasury is authorized and empowered to prescribe regulations governing the issuance, redemption, replacement, retirement and destruction of such circulating notes and the release and substitution of security therefor. Such circulating notes shall be subject to the same tax as is provided by law for the circulating notes of national banks secured by 2 per cent bonds of the United States. No such circulating notes shall be issued under this paragraph after the President has declared by proclamation that the

Amount of issue.

Face value

Value, use, etc.

Redemption.

Regulations.

Tax.

Issue to cease when emergency terminates; exception.

emergency recognized by the President by proclamation of March 6, 1933, has terminated, unless such circulating notes are secured by deposits of bonds of the United States bearing the circulation privilege. When required to do so by the Secretary of the Treasury, each Federal reserve agent shall act as agent of the Treasurer of the United States or of the Comptroller of the Currency, or both, for the performance of any of the functions which the Treasurer or the Comptroller may be called upon to perform in carrying out the provisions of this paragraph. Appropriations available for distinctive paper and printing United States currency or national bank currency are hereby made available for the production of the circulating notes of Federal reserve banks herein provided; but the United States shall be reimbursed by the Federal reserve bank to which such notes are issued for all expenses necessarily incurred in connection with the procuring of such notes and all other expenses incidental to their issue, redemption, replacement, retirement and destruction."

Agent of Treasurer or Comptroller of the Currency.

Sums available for expenses.

Reimbursement.

SEC. 402. Section 10(b) of the Federal Reserve Act, as amended, is further amended to read as follows:

Vol. 47, p. 56, amended.
U.S.C., Supp. VI, p. 136.

"SEC. 10(b). In exceptional and exigent circumstances, and when any member bank has no further eligible and acceptable assets available to enable it to obtain adequate credit accommodations through rediscounting at the Federal reserve bank or any other method provided by this Act other than that provided by section 10 (a), any Federal reserve bank, under rules and regulations prescribed by the Federal Reserve Board, may make advances to such member bank on its time or demand notes secured to the satisfaction of such Federal reserve bank. Each such note shall bear interest at a rate not less than 1 per centum per annum higher than the highest discount rate in effect at such Federal reserve bank on the date of such note. No advance shall be made under this section after March 3, 1934, or after the expiration of such additional period not exceeding one year as the President may prescribe."

Advances to member banks when acceptable assets not available for rediscount.
Post, p. 21.

Security.

Interest.

Expiration.

SEC. 403. Section 13 of the Federal Reserve Act, as amended, is amended by adding at the end thereof the following new paragraph:

"Subject to such limitations, restrictions and regulations as the Federal Reserve Board may prescribe, any Federal reserve bank may make advances to any individual, partnership or corporation on the promissory notes of such individual, partnership or corporation secured by direct obligations of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal reserve bank, subject to the review and determination of the Federal Reserve Board."

Advances to individuals, etc.

Security, interest, etc.

Post, p. 20.

TITLE V

SEC. 501. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $2,000,000, which shall be available for expenditure, under the direction of the President and in his discretion, for any purpose in connection with the carrying out of this Act.

Appropriation.

SEC. 502. The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Amendment, etc.

Saving provision.

Approved, March 9, 1933, 8.30 p. m.

[CHAPTER 2.]

JOINT RESOLUTION

March 17, 1933.
[H. J. Res. 75.]
[Pub. Res., No. 1.]

To provide for certain expenses incident to the first session of the Seventy-third Congress.

Appropriations for certain expenses, first session, Seventy-third Congress.
Mileage.
Sums available.
Vol. 47, pp. 1351, 1354.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the appropriations for mileage of Senators, Representatives, the Resident Commissioner from Puerto Rico, and the Delegate from Hawaii, and for expenses of the Delegate from Alaska and the Resident Commissioners from the Philippine Islands, contained in the Legislative Appropriation Act for the fiscal year 1934, are hereby made immediately available and authorized to be paid to Senators, Representatives, Delegates, and Resident Commissioners, for attendance on the first session of the Seventy-third Congress.

Stationery.
Vol. 47, p. 1358.

The appropriation for stationery for Representatives, Delegates, and Resident Commissioners, and for the committees and officers of the House, contained in the Legislative Appropriation Act for the

Limitations waived.
Vol. 47, p. 408.

fiscal year 1934, is hereby made immediately available for expenditure on account of the first session of the Seventy-third Congress notwithstanding the provisions of section 304 of the Act of June 30, 1932 (47 Stat. 408): *Provided*, That from such sum each Representative, Delegate, and Resident Commissioner shall be allowed $90 for stationery allowance or commutation therefor.

Proviso.
Stationery allowance.

Approved, March 17, 1933.

[CHAPTER 3.]

AN ACT

March 20, 1933.
[H.R. 2820.]
[Public, No. 2.]

To maintain the credit of the United States Government.

Maintenance of credit of United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

Veterans.

VETERANS

Pensions.
Regulations of the President.
Post, pp. 524, 1282.
Executive orders, Nos. 6089-6100, March 31, 1933; 6156-6159, June 6, 1933; 6231-6234, July 28, 1933.
Classes entitled.
Disease, etc., in line of duty.

SECTION 1. That subject to such requirements and limitations as shall be contained in regulations to be issued by the President, and within the limits of appropriations made by Congress, the following classes of persons may be paid a pension:

(a) Any person who served in the active military or naval service and who is disabled as a result of disease or injury or aggravation of a preexisting disease or injury incurred in line of duty in such service.

Certain war-time services.

(b) Any person who served in the active military or naval service during the Spanish-American War, including the Boxer Rebellion and the Philippine Insurrection, or the World War, and who is permanently disabled as a result of injury or disease: *Provided*, That nothing contained in this title shall deny a pension to a Spanish-American War veteran past the age of sixty-two years entitled to a pension under existing law, but the President may reduce the rate of pension as he may deem proper.

Proviso.
Spanish - American War veteran over 62.

Widows, dependent parents, etc.

(c) The widow, child, or children, dependent mother or father, of any person who dies as a result of disease or injury incurred or aggravated in line of duty in the active military or naval service.

Designated war service.

(d) The widow and/or child of any deceased person who served in the active military or naval service during the Spanish-American War, including the Boxer Rebellion and the Philippine Insurrection.

Emergency Powers Statutes (Senate Report 93-549)

In this 1973 official report, the U.S. Senate admits that the Emergency Powers given to the President under the pretense of the National Emergency of 1933 have remained in force and that the normal function of the Federal government has been suspended.

93d Congress
SENATE
Report No. 93-549
1st Session

EMERGENCY POWERS STATUTES:

PROVISIONS OF FEDERAL LAW NOW IN EFFECT DELEGATING TO THE EXECUTIVE EXTRAORDINARY AUTHORITY IN TIME OF NATIONAL EMERGENCY REPORT OF THE SPECIAL COMMITTEE ON THE TERMINATION OF THE NATIONAL EMERGENCY UNITED STATES SENATE NOVEMBER 19, 1973

**U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1973
24-509 O**

SPECIAL COMMITTEE ON THE TERMINATION OF THE NATIONAL EMERGENCY

FRANK CHURCH, Idaho Co-Chairman
PHILIP A. HART, Michigan
CLAIBORNE PELL, Rhode Island
ADLAI E. STEVENSON III, Illinois

CHARLES McC MATHIAS, Jr., Maryland
CLIFFORD P. CASE, New Jersey
JAMES B. PEARSON, Kansas
CLIFFORD P. HANSEN, Wyoming

WILLIAM G. MILLER, Staff Director
THOMAS A. DINE, Professional Staff

FOREWORD

Since March 9, 1933, the United States has been in a state of declared national emergency. In fact, there are now in effect four presidentially-proclaimed states of national emergency: In addition to the national emergency declared by President Roosevelt in 1933, there are also the national emergency proclaimed by President Truman on December 16, 1950, during the Korean conflict, and the states of national emergency declared by President Nixon on March 23, 1970, and August 15, 1971.

These proclamations give force to 470 provisions of Federal law. These hundreds of statutes delegate to the President extraordinary powers, ordinarily exercised by the Congress, which affect the lives of American citizens in a host of all-encompassing manners. This vast range of powers, taken together, confer enough authority to rule the country without reference to normal Constitutional processes.

Under the powers delegated by these statutes, the President may: seize property; organize and control

the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens.

With the melting of the cold war--the developing detente with the Soviet Union and China, the stable truce of over 20 years duration between North and South Korea, and the end of U.S. involvement in the war in Indochina--there is no present need for the United States Government to continue to function under emergency conditions.

The Special Committee on the Termination of the National Emergency was created (1) to examine the consequences of terminating the declared states of national emergency that now prevail; to recommend what steps the Congress should take to ensure that the termination can be accomplished without adverse effect upon the necessary tasks of governing; and, also, to recommend ways in which the United States can meet future emergency situations with speed and effectiveness but without relinquishment of congressional oversight and control.

In accordance with this mandate, the Special Committee-- in conjunction with the Executive branch, expert constitutional authorities, as well as former high officials of this Government-- is now engaged in a detailed study to determine the most reasonable ways to restore normalcy to the operations of our Government.

A first and necessary step was to bring together the body of statutes, which have been passed by Congress, conferring extraordinary powers upon the Executive branch in times of national emergency.

This has been a most difficult task. Nowhere in the Government, in either the Executive or Legislative branches, did there exist a complete catalog of all emergency statutes. Many were aware that there had been a delegation of an enormous amount of power but, of how much power, no one knew. In order to correct this situation, the Special Committee staff was instructed to work with the Executive branch, the Library of Congress, and knowledgeable legal authorities to compile an authoritative list of delegated emergency powers.

This Special Committee study, which contains a list of all provisions of Federal law, except the most trivial, conferring extraordinary powers in time of national emergency, was compiled by the staff under the direction of Staff Director William G. Miller, and Mr. Thomas A. Dine; utilizing the help of the General Accounting Office, the American Law Division of the Library of Congress, the Department of Justice, the Department of Defense, and the Office of Emergency Planning.

The Special Committee is grateful for the assistance provided by Jack. Goldklang of the Office of Legal Counsel, Department of Justice; Lester S. Jayson, the director of the Congressional Research Service of the Library of Congress; Joseph E. Ross, head of the American Law Division of CRS; and especially Raymond Celada of the American Law Division and his able assistants, Charles V. Dale and Grover S. Williams; Paul Armstrong of the General Accounting Office; Linda Lee, Patrick Norton, Roland Moore, William K. Sawyer, Audrey Hatry, Martha Mecham, and David J. Kyte.

The Special Committee will also publish a list of Executive Orders, issued pursuant to statutes brought into force by declared states of emergency, at a later date.

CHARLES McC. MATHIAS, JR.
FRANK CHURCH,
Co-Chairmen.

Note 1: S. Res. 9, 93d Cong., 1st Sess.

EMERGENCY POWERS STATUTES: PROVISIONS OF FEDERAL LAW NOW IN EFFECT DELEGATING TO THE EXECUTIVE EXTRAORDINARY AUTHORITY IN TIME OF NATIONAL EMERGENCY

November 19, 1973.-Ordered to be printed

Mr. MATHIAS (for Mr. CHURCH) as co-chairman of the Special Committee on the Termination of the National Emergency, submitted the following

REPORT
[Pursuant to S. Res. 9, 93d Cong.]

INTRODUCTION

(A) A BRIEF HISTORICAL SKETCH OF THE ORIGINS OF EMERGENCY POWERS NOW IN FORCE

A majority of the people of the United States have lived all of their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency. The problem of how a constitutional democracy reacts to great crises, however, far antedates the Great Depression. As a philosophical issue, its origins reach back to the Greek city-states and the Roman Republic. And, in the United States, actions taken by the Government in times of great crises have-from, at least, the Civil War-in important ways, shaped the present phenomenon of a permanent state of national emergency.

American political theory of emergency government was derived and enlarged from John Locke, the English political-philosopher whose thought influenced the authors of the Constitution. Locke argued that the threat of national crisis-unforeseen, sudden, and potentially catastrophic-required the creation of broad executive emergency powers to be exercised by the Chief Executive in situations where the legislative authority had not provided a means or procedure of remedy. Referring to emergency power in the 14th chapter of his Second Treatise on Civil Government as "prerogative," Locke suggested that it:

> ...should be left to the discretion of him that has the executive power...since in some governments the lawmaking power is not always in being and is usually too numerous, and so too slow for the dispatch requisite to executions, and because, also it is impossible to foresee and so by laws to provide for all accidents and necessities that may concern the public, or make such laws as will do no harm, if they are executed with an inflexible rigour on all occasions and upon all persons that may come in their way, therefore there is a latitude left to the executive power to do many things of choice; which the laws do not prescribe.

To what extent the Founding Fathers adhered to this view of the executive role in emergencies is a much disputed issue. Whatever their conceptions of this role, its development in practice has been based largely on the manner in which individual President's have viewed their office and its functions. Presidents Theodore Roosevelt and William Howard Taft argued the proper role of the President and, perhaps, their debate best expounds diametrically-opposed philosophies of the presidency. In his

autobiography, Roosevelt asserted his "stewardship theory."

> My view was that every Executive officer...was a steward of the people bound actively and affirmatively to do all he could for the people and not to content himself with the negative merit of keeping his talents undamaged in a napkin...My belief was that it was not only [the President's] right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of departments. I did not usurp power but I did greatly broaden the use of executive power. In other words, I acted for the common well being of all our people whenever and whatever measure was necessary, unless prevented by direct constitutional or legislative prohibition.

Roosevelt compared this principle of "stewardship" to what he called the Jackson-Lincoln theory, and contrasted it to the theory ascribed to William Howard Taft.

Roosevelt's ideas on the limit of presidential authority and responsibility were vigorously disputed by Taft. In lectures on the presidency--delivered at Columbia University in 1915-1916-Taft responded that: "... the wide field of action that this would give to the Executive one can hardly limit. A President can exercise no power which cannot fairly and reasonably be traced to some specific grant of power." And he cautioned that: "... such specific grants must be either in the Federal Constitution, or in any act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest."

In recent years, most scholars have interpreted the Roosevelt-Taft dispute in Roosevelt's favor. In the prevailing academic view, Roosevelt is described as "active," "expansionist," and "strong." The historical reality, in fact, does not afford such a sharp distinction either between the actions of these two Presidents, or between their analysis of the problem of emergency powers. Taft, in his concluding remarks to his Columbia lectures, said : "Executive power is limited, so far as it is possible to limit such a power consistent -with that discretion and promptness of action that are essential to preserve the interests of the public in times of emergency or legislative neglect or inaction." Thus, even Taft was disposed to employ emergency power when the need arose, but, he did not wish to go beyond his own narrower, conservative conception of what was meant by constitutional and legal bounds. Thus, the dispute was over where those bounds lay, rather than the nature of the office itself.

Taft's successor, Woodrow Wilson, was no less zealous in observing what he thought the Constitution demanded. Faced with the exigencies of World War I, Wilson found it necessary to expand executive emergency powers enormously. In many respects, this expansion ofpowers in wartime was based on precedents set by Lincoln decades earlier. Unlike Lincoln, however, Wilson relied heavily on Congress for official delegations of authority no matter how broadly these might be.

Wilson's exercise of power in the First World War provided a model for future Presidents and their advisors. During the preparedeness period of 1915-1916, the submarine crisis in the opening months of 1917, and the period of direct involvement of U.S. armed forces from April 1917 to November 1918, Wilson utilized powers as sweeping as Lincoln's. Because governmental agencies were more highly organized and their jurisdictions wider, presidential powers were considerably more effective than ever before. Yet, perhaps, because of Wilson's scrupulous attention to obtaining prior congressional concurrence, there was only one significant congressional challenge to Wilson's wartime measures.

That challenge came in February-March 1917, following the severance of diplomatic relations with Germany. A group of Senators successfully filibustered a bill authorizing the arming of American

merchant ships. In response--records American historian Frank Freidel in his book Roosevelt: the Apprenticeship-Assistant Secretary of the Navy Franklin D. Roosevelt found an old statute under which the President could proceed without fresh authorization from Congress. Roosevelt, impatient for action, was irritated because Wilson waited a few days before implementing the statute.

Lincoln had drawn most heavily upon his power as Commander-in-Chief; Wilson exercised emergency power on the basis of old statutes and sweeping new legislation--thus drawing on congressional delegation as a source of authority: The most significant Wilsonian innovations were economic, including a wide array of defense and war agencies, modeled to some extent upon British wartime precedents. In August 1916 just prior to the United States entry into the war, Congress at Wilson's behest established a Council of National Defense-primarily advisory. In 1917, a War Industries Board, also relatively weak, began operating. The ineffectiveness of the economic mobilization led Republicans in Congress-in the winter of 1917-1918 to demand a coalition War Cabinet similar to that in England. Wilson forestalled Congress by proposing legislation delegating him almost total economic power and, even before legislative approval, authorized the War Industries Board to exercise extensive powers. Subsequently Congress enacted Wilson's measure, the Overman Act, in April 1918. Other legislation extended the economic authority of the Government in numerous directions.

Following the allied victory, Wilson relinquished his wartime authority and asked Congress to repeal the emergency statutes, enacted to fight more effectively the war. Only a food-control measure and the 1917 Trading With the Enemy Act were retained. This procedure of terminating emergency powers when the particular emergency itself has, in fact, ended has not been consistently followed by his successors.

The next major development in the use of executive emergency powers came under Franklin D. RooseveIt. The Great Depression had already overtaken the country by the time of Roosevelt's inauguration and confronted him with a totally different crisis. This emergency, unlike those of the past, presented a nonmilitary threat. The Roosevelt administration, however, conceived the economic crisis to be a calamity equally as great as a war and employed the metaphor of war to emphasize the depression's severity. In his inaugural address, Roosevelt said: "I shall ask the Congress for the one remaining instrument to meet the crisis--broad executive power to wage a war against the emergency, as great as the power that would be given me if we were in fact invaded by a foreign foe."

Many of the members of the Roosevelt administration, including F.D.R. himself, were veterans of the economic mobilization of World War I and drew upon their experiences to combat the new situation. The first New Deal agencies, indeed, bore strong resemblance to wartime agencies and many had the term "emergency" in their titles-such as the Federal Emergency Relief Administration and the National Emergency Council.

In his first important official act, Roosevelt proclaimed a National Bank Holiday on the basis of the 1917 Trading With the Enemy Act-itself a wartime delegation of power. New Deal historian William E. Leuchtenburg writes:

> When he sent his banking bill to Congress, the House received it with much the same ardor as it had greeted Woodrow Wilson's war legislation. Speaker Rainey said the situation reminded him of the late war when "on both sides of this Chamber the great war measures suggested by the administration were supported with practical unanimity....Today we are engaged in another war, more serious even in its character and presenting greater dangers to the Republic."
> After only 38 minutes debate, the House passed the administration's banking bill, sight unseen.

The Trading With the Enemy Act had, however, been specifically designed by its originators to meet only wartime exigencies. By employing it to meet the demands of the depression, Roosevelt greatly extended the concept of "emergencies" to which expansion of executive powers might be applied. And in so doing, he established a pattern that was followed frequently: In time of crisis the President should utilize any statutory authority readily at hand, regardless of its original purposes, with the firm expectation of ex post facto congressional concurrence.

Beginning with F.D.R., then, extensive use of delegated powers exercised under an aura of crisis has become a dominant aspect of the presidency. Concomitant with this development has been a demeaning of the significance of "emergency." It became a term used to evoke public and congressional approbation, often bearing little actual relation to events. Roosevelt brain-truster, Rexford G. Tugwell, has described the manner in which Roosevelt used declarations of diferent degrees of emergency:

> The "limited emergency" was a creature of Roosevelt's imagination, used to make it seem that he was doing less than he was. He did not want to create any more furor than was necessary. The qualifying adjective had no limiting force. It was purely for public effect. But the finding that an emergency existed opened a whole armory of powers to the Commander-in-Chief, far more than Wilson had had.

Roosevelt and his successor, Harry S. Truman, invoked formal states of emergency to justify extensive delegations of authority during actual times of war. The Korean war, however, by the fact of its never having been officially declared a "war" as such by Congress, further diluted the concept of what constituted circumstances sufficiently critical to warrant the delegation of extraordinary authority to the President.

At the end of the Korean war, moreover, the official state of emergency was not terminated. It is not yet terminated. This may be primarily attributed to the continuance of the Cold War atmosphere which, until recent years, made the imminent threat of hostilities an accepted fact of everyday life, with "emergency" the normal state of affairs. In this, what is for all practical purposes, permanent state of emergency, Presidents have exercised numerous powers-most notably under the Trading With the Enemy Act-legitimated by that ongoing state of national emergency. Hundreds of others have lain fallow, there to be exercised at any time, requiring only an order from the President.

Besides the 1933 (1) and Korean war emergencies (2), two other states of declared national emergency remain in existence. On March 23, 1970, confronted by a strike of Postal Service employees, President Nixon declared a national emergency. (3) The following year, on August 15, 1971, Nixon proclaimed another emergency (4) under which he imposed stringent import controls in order to meet an international monetary crisis. Because of its general language, however, that proclamation could serve as sufficient authority to use a substantial proportion of all the emergency statutes now on the books.

Over the course of at least the last 40 years, then, Presidents have had available an enormous-seemingly expanding and never-ending -range of emergency powers. Indeed, at their fullest extent and during the height of a crisis, these "prerogative" powers appear to be virtually unlimited, confirming Locke's perceptions. Because Congress and the public are unaware of the extent of emergency powers, there has never been any notable congressional or public objection made to this state of affairs. Nor have the courts imposed significant limitations.

During the New Deal, the Supreme Court initially struck down much of Roosevelt's emergency economic legislation (*Schecter v. United States*, 295 U.S. 495). However, political pressures, a change in personnel, and presidential threats of court-packing, soon altered this course of decisions (*NLRB v. Jones & Lauqhlin Steel Corp.*, 301 U.S. 1). Since 1987, the Court has been extremely reluctant to

invalidate any congressional delegation of economic powers to the President. It appears that this will not change in the foreseeable future.

In a significant case directly confronting the issue of wartime emergency powers, *Youngstown Sheet & Tube Co. v. Sawyer* (343 U.S. 579), the Court refused to allow the President to rely upon implied constitutional powers during a crisis. The action at issue involved presidential seizure of steel plants in a manner apparently directly at odds with congressional policy, Justice Black's plurality opinion specifically acknowledges that if Congress delegates powers to the President for use during an emergency those powers are absolutely valid within constitutional restraints on Congress' own power to do so. Concurring opinions appear to agree on this point. It should be noted, therefore, that all statutes in this compilation are precisely these kinds of specific congressional delegations of power.

The 2,000-year-old problem of how a legislative body in a democratic republic may extend extraordinary powers for use by the executive during times of great crisis and dire emergency-but do so in ways assuring both that such necessary powers will be terminated immediately when the emergency has ended and that normal processes will be resumed - has not yet been resolved in this country. Too few are aware of the existence of emergency powers and their extent, and the problem has never been squarely faced.

(B) SUMMARY VIEWS OF THE PRESENT STATUS OF EMERGENCY POWERS STATUTES

A review of the laws passed since the first state of national emergency was declared in 1933, reveals a consistent pattern of lawmaking. It is a pattern showing that the Congress, through its own actions, transferred awesome magnitudes of power to the executive ostensibly to meet the problems of governing effectively in times of great crisis. Since 1933, Congress has passed or recodified over 470 significant statutes delegating to the President powers that had been the prerogative and responsibility of the Congress since the beginning of the Republic. No charge can be sustained that the Executive branch has usurped powers belonging to the Legislative branch; on the contrary, the transfer of power has been in accord with due process of normal legislative procedures.

It is fortunate that at this time that, when the fears and tensions of the cold war are giving way to relative peace and detente is now national policy, Congress can assess the nature, quality, and effect of what has become known as emergency powers legislation. Emergency powers make up a relatively small but important body of statutes-some 470 significant provisions of law out of the total of tens of thousands that have been passed or recodified since 1933. But emergency powers laws are of such significance to civil liberties, to the operation of domestic and foreign commerce, and the general functioning of the U.S. Government, that, in microcosm, they reflect dominant trends in the political, economic, and judicial life in the United States.

A number of conclusions can be drawn from the Special Committee's study and analysis of emergency powers laws now in effect. Congress has in most important respects, except for the final action of floor debate and the formal passage of bills, permitted the Executive branch to draft and in large measure to "make the laws." This has occurred despite the constitutional responsibility conferred on Congress by Article I Section 8 of the Constitution which states that it is Congress that "makes all Laws..."

Most of the statutes pertaining to emergency powers were passed in times of extreme crisis. Bills drafted in the Executive branch were sent to Congress by the President and, in the case of the most significant laws that ate on the books, were approved with only the most perfunctory committee review and virtually no consideration of their effect on civil liberties or the delicate structure of the U.S. Government of divided powers. For example, the economic measures that were passed in 1933 pursuant

to the proclamation of March 5, 1933, by President Roosevelt, asserting that a state of national emergency now existed, were enacted in the most turbulent circumstances. There was a total of only 8 hours of debate in both houses. There were no committee reports; indeed, only one copy of the bill was available an the floor.

This pattern of hasty and inadequate consideration was repeated during World War II when another group of laws with vitally significant and far reaching implications was passed. It was repeated during the Korean war and, again, in most recent memory, during the debate on the Tonkin Gulf Resolution passed on August 6, 1064.

On occasion, legislative history shows that during the limited debates that did take place, a few, but very few, objections were raised by Senators and Congressmen that expressed serious concerns about the lack of provision for congressional oversight. Their speeches raised great doubts about the wisdom of giving such open-ended authority to the President, with no practical procedural means to withdraw that authority once the time of emergency had passed.

For example, one of the very first provisions passed in 1988 was the Emergency Banking Act based upon Section 5(b) of the Trading With the Enemy Act of 1917. The provisions gave to President Roosevelt, with the full approval of the Congress, the authority to control major aspects of the economy, an authority which had formerly been reserved to the Congress. A portion of that provision, still in force, is quoted here to illustrate the kind of open-ended authority Congress has given to the President during the past 40 years:

> (b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise-
>
> > (A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and
> > (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest.
>
> by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed be the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had anger interest, or as may be otherwise

necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, receive the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters. memoranda. or other papers, in the custody or control of such person; and the President, may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

To cite two further examples:

In the context of the war powers issue and the long debate of the past decade over national commitments, 10 U.S.C. 712 is of importance:

10 U.S.C. 712. Foreign governments: detail to assist.
(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters-
(1) any republic in North America, Central America, or South America;
(2) the Republic of Cuba, Haiti, or Santo Domingo and
(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.
(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

The Defense Department, in answer to inquiries by the Special Committee concerning this provision, has stated that it has only been used with regard to Latin America, and interprets its applicability as being limited to noncombatant advisers. However, the language of Section 712 is wide open to other interpretations. It could be construed as a way of extending considerable military assistance to any foreign country. Since Congress has delegated this power, arguments could be made against the need for further congressional concurrence in a, time of national emergency.

The repeal of almost all of the Emergency Detention Act of 1950 was a constructive and necessary step, but the following provision remains:

18. U.S.C. 1383. Restrictions in military areas and zones.

Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an

> Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

18 U.S.C. 1383 does not appear on its face to be an emergency power. It was used as the basis for internment of Japanese-Americans in World War II. Although it seems to be cast as a permanent power,the legislative history of the section shows that the statute was intended as a World War II emergency power only, and was not to apply in "normal" peacetime circumstances. Two years ago, the Emergency Detention Act was repealed, yet 18 U.S.C. 1383 has almost the same effect.

Another pertinent question among many, that the Special Committee's work has revealed, concerns the statutory authority for domestic surveillance by the FBI. According to some experts, the authority for domestic surveillance appears to be based upon an Executive Order issued by President Roosevelt during an emergency period. If it is correct that no firm statutory authority exists, then it is reasonable to suggest that the appropriate committees enact proper statutory authority for the FBI with adequate provision for oversight by Congress.

What these examples suggest and what the magnitude of emergency powers affirm is that most of these laws do not provide for congressional oversight or termination. There are two reasons which can be adduced as to why this is so. First, few, if any, foresaw that the temporary states of emergency declared in 1938, 1939, 1941, 1950, 1970, and 1971 would become what are now regarded collectively as virtually permanent states of emergency (the 1939 and 1941 emergencies were terminated in 1952). Forty years can, in no way, be defined as a temporary emergency. Second, the various administrations who drafted these laws for a variety of reasons were understandably not concerned about providing for congressional review, oversight, or termination of these delegated power's which gave the President enormous powers and flexibility to use those powers.

The intense anxiety and sense of crisis was contained in the rhetoric of Truman's 1050 proclamation:

> Whereas recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and
>
> Whereas world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world; and
>
> Whereas, if the goal of communist imperialism were to be achieved. the people of this country would no longer enjoy the full and rich life they have with God's help built for themselves and their children; they would no longer enjoy the blessings of the freedom of worshipping as they severally choose, the freedom of reading and listening to what they choose, the right of free speech, including the right to criticize their Government, the right to choose those who will conduct their Government, the right to engage freely in collective bargaining, the right to engage freely in their own business enterprises, and the many other freedoms and rights which are a part of our way of life; and
>
> Whereas, the increasing menace of the forces of communist aggression requires that the national defense of the United States be strengthened as speedily as possible:

Now, therefore, I, Harry S. Truman, President of the United States of America, do proclaim the existence of a national emergency, which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made through the United Nations and otherwise to bring about lasting peace.

I summon all citizens to make a united effort for the security and well-being of our beloved country and to place its needs foremost in thought and action that the full moral and material strength of the Nation may be readied for the dangers which threaten us.

I summon our farmers, our workers in industry, and our businessmen to make a mighty production effort to meet the defense requirements of the Nation and to this end to eliminate all waste and inefficiency and to subordinate all lesser interests to the common good.

I summon every person and every community to make, with a spirit of neighborliness, whatever sacrifices are necessary for the welfare of the Nation.

I summon all State and local leaders and officialsto cooperate fully with the military and civilian defense agencies of the United States in the national defense program.

I summon all citizens to be loyal to the principles upon which our Nation is founded, to keep faith with our friends and allies, and to be firm in our devotion to the peaceful purposes for which the United Nations was founded.

I am confident that we will meet the dangers that confront us with courage and determination, strong in the faith that we can thereby "secure the Blessings of Liberty to ourselves and our Posterity."

In witness whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed. Done at the City of Washington this 16th day of December (10:90 a.m.) in the year of our Lord nineteen hundred and fifty, and of the Independence of the United States of America the one hundred and seventy-fifth.

HARRY S. TRUMAN
[SEAL]
By the President:

DEAN ACHESON,
Secretary of State

The heightened sense of crisis of the cold war so evident in Truman's proclamation has fortunately eased. The legislative shortcomings contained in this body of laws can be corrected on the basis of rational study and inquiry.

In the view of the Special Committee, an emergency does not now exist. Congress, therefore, should act in the near future to terminate officially the states of national emergency now in effect.

At the same time, the Special Committee is of the view that it is essential to provide the means for the Executive to act effectively in an emergency. It is reasonable to have a body of laws in readiness to

delegate to the President extraordinary powers to use in times of real national emergency. The portion of the concurring opinion given by Justice Jackson in the Youngstown Steel case with regard to emergency powers provides sound and pertinent guidelines for the maintenance of such a body of emergency laws kept in readiness to be used in times of extreme crisis. Justice Jackson, supporting the majority opinion that the "President's power must stem either from an act of Congress or from the Constitution itself" wrote:

> The appeal, however, that we declare the existence of inherent powers ex necessitate to meet an emergency asks us to do what many think would be wise, although it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies. Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion, when the public safety may require it, they made no express provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work, and, if we could, I am not convinced it would be wise to do so, although many modern nations have forthrightly recognized that war and economic crises may upset the normal balance between liberty and authority. Their experience with emergency powers may not be irrelevant to the argument here that we should say that the Executive, of his own volition, can invest himself with undefined emergency powers.
>
> Germany, after the First World War, framed the Weimar Constitution, designed to secure her liberties in the Western tradition. However, the President of the Republic, without concurrence of the Reichstag, was empowered temporarily to suspend any or all individual rights if public safety and order were seriously disturbed or endangered. This proved a temptation to every government, whatever its shade of opinion, and in 13 years suspension of rights was invoked on more than 250 occasions. Finally, Hitler persuaded President Von Hindenburg to suspend ail such rights, and they were never restored.
>
> The French Republic provided for a very different kind of emergency government known as the "state of seige." It differed from the German emergency dictatorship particularly in that emergency powers could not be assumed at will by the Executive but could only be granted as a parliamentary measure. And it did not, as in Germany, result in a suspension or abrogation of law but was a legal institution governed by special legal rules and terminable by parliamentary authority.
>
> Great Britain also has fought both World Wars under a sort of temporary dictatorship created by legislation. As Parliament is not bound by written constitutional limitations, it established a crisis government simply by delegation to its Ministers of a larger measure than usual of its own un1imited power, which is exercised under its supervision by Ministers whom it may dismiss, This has been called the "high-water mark in the voluntary surrender of liberty," but, as Churchill put it, "Parliament stands custodian of these surrendered liberties, and its most sacred duty will be to restore them in their fullness when victory has crowned our exertions and our perseverance." Thus, parliamentary controls made emergency powers compatible with freedom.
>
> This contemporary foreign experience may be inconclusive as to the wisdom of lodging emergency powers somewhere in a modern government. But it suggests that emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent pointers" formula.

Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an executive convenience.

In the practical working of our Government we already have evolved a technique within the framework of the Constitution by which normal executive powers may be considerably expanded to meet an emergency, Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. In 1939, upon congressional request, the Attorney General listed ninety-nine such separate statutory grants by Congress of emergency or wartime executive powers. They were invoked from time to time as need appeared. Under this procedure we retain Government by law-special, temporary law, perhaps, but law nonetheless. The public may know the extent and limitations of the powers that can be asserted, and persons affected may be informed from the statute of their rights and duties.

In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end, If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.

24-509 O - 73 - 3

But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.

The essence of our free Government is "leave to live by no man's leave, underneath the law"-to be governed by those impersonal forces which we call law. Our Government is fashioned to fulfill this concept so far as humanly possible. The Executive, except for recommendation and veto, has no legislative power. The executive action we have here originates in the individual will of the President and represents an exercise of authority without law. No one, perhaps not even the President, knows the limits of the power he may seek to exert in this instance and the parties affected cannot learn the limit of their rights. We do not know today what powers over labor or property would be claimed to flow from Government possession if we should legalize it, what rights to compensation would be claimed or recognized, or on what contingency it would end. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up.

With these guidelines and against the background of experience of the last 40 years, the task that remains for the Special Committee is to determine - in close cooperation with all the Standing Committees of the Senate and all Departments, Commissions, and Agencies of the Executive branch - which of the laws now in force might be of use in a future emergency. Most important, a legislative formula needs to be devised which will provide a regular and consistent procedure by which any emergency provisions are called into force. It will also be necessary to establish a means by which Congress can exercise effective oversight over such actions as are taken pursuant to a state of national emergency as well as providing a regular and consistent procedure for the termination of such grants of authority.

TEXTUAL NOTE

COMPILING THE TEXTS OF EMERGENCY POWER STATUTES

Pursuant to S. Res. 9 of January 6, 1973, the U.S. Senate directed the Special Committee on the Termination of the National Emergency to study and investigate emergency powers legislation now in force.

From the outset of its work, the Special Committee faced the problem of determining, with reasonable accuracy, the number, nature, and extent of emergency statutes passed by Congress since 1933 which delegate extraordinary powers to the President in time of crisis or impending catastrophe. It was evident, initially, that existing listings of executive emergency powers were either out-of-date or inadequate for the Special Committee's purposes. It became apparent, too, that the United States Government has been operating under an unrelieved state of emergency of 40 years' duration. During this period, an enormous body of laws dealing with severe economic crisis and America's response to three wars had been passed by Congress through an almost unnoticed process of gradual accretion.

In the past, the only way to compile a catalog useful to Congress would have required going through every page of the 86 volumes of the Statutes-at-Large. Fortunately, the U.S. Code (1970 edition and one supplement) was put onto computer tapes by the United States Air Force in the so-called LITE System, which is located at a military facility in the State of Colorado. The Special Committee staff, working in conjunction with the Justice Department, the Library of Congress, and the General Accounting Office, devised several programs for computer searches. These programs were based on a wide spectrum of key words and phrases contained in typical provisions of law ,which delegate extraordinary powers. Examples of some trigger words are "national emergency," "war," "national defense," "invasion," "insurrection," etc. These programs, designed to produce a computer printout of all provisions of the U.S. Code that pertain to a state of war or national emergency, resulted in several thousand citations. At this point, the Special Committee staff and the staff of the American Law Division, Library of Congress, went through the printouts, separated out all those provisions of the U.S, Code most relevant to war or national emergency, and weeded out those provisions of a trivial or extremely remote nature. Two separate teams worked on the computer printouts and the results were put together in a third basic list of U.S. Code citations.

To determine legislative intent, the U.S. Code citations were then hand checked against the Statutes-at-Large, the Reports of Standing Committees of the U.S. Senate and House of Representatives and, where applicable, Reports of Senate and House Conferences.

In addition, the laws passed since the publishing of the 1970 Code were checked and relevant citations were added to the master list. The compilation was then checked against existing official catalogs: That of the Department of Defense, "Digest of War and Emergency Legislation Affecting the Department of Defense"; that of the Once of Emergency Planning, "Guide to the Emergency Powers Conferred by

Laws in Effect on January 1, 1969"; and, the 1962 House Judiciary Committee synopsis of emergency powers, "Provisions of Federal Law in Effect in Time of National Emergency."

The task of compiling a catalog of emergency powers statutes, therefore, has been immeasurably assisted by use of computers, but computers could not replace the need for a systematic and very laborious hand search of all of the volumes of the U.S. Code, the Statutes-at-Large, and Senate and House Reports. The following compilation is intended to be used as a working list of the most relevant emergency provisions of the law. The Special Committee cannot be certain that every statute that could or may be called into use during a time of war or national emergency is in the following compilation. However, the Special Committee believes that the most significant provisions are herein cataloged.

The compilation is organized as follows:

1. A summary of all the U.S. Code citations in order of their appearance in the Code, and specific Public Laws with the Congress and the year they were enacted.

2. The texts of U.S. Code citations and Public Laws with explanatory notes and such material from Senate and House Reports which explains Congress' primary intent concerning these provisions of law.

3. Citation of statutes in accordance to committee jurisdictions.

The appendix contains:

1. Seven tables that list various breakdowns of the usage of the United States Code.

2. The four proclamations of national emergency now in effect.

3. A subject index.

---

1 See Appendix. p. 594.
2 Ibid
3 Ibid, p. 596.
4 Ibid, p. 597.